IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ANDRES CAZARES, as Special Administrator of the Estate of ANDREW CAZARES, Deceased, Plaintiff, v. JOSEPH FRUGOLI, JOHN R. MORAN, PRIMERO, INC., METROPOLITAN BANK LAND TRUST 1463, CITY OF CHICAGO, Defendants.	Docket No. 13 C 05626 Chicago, Illinois December 10, 2015 10:06 a.m.
FAUSTO T. MANZERA, as Special Administrator of the Estate of FAUSTO A. MANZERA, et al., Plaintiff, v. JOSEPH FRUGOLI, JOHN R. MORAN, PRIMERO, INC., METROPOLITAN BANK LAND TRUST 1463, CITY OF CHICAGO, Defendants	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE VIRGINIA M. KENDALL

APPEARANCES:

For Plaintiff Manzera: COONEY & CONWAY by
MR. JAMES T. NEWMAN
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For Plaintiff Cazares: HALL PRANGLE & SCHOONVELD by
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A P P E A R A N C E S : (Continued)

For the Defendant Frugoli:	SPYRATOS DAVIS LLC by MS. PAMELA PIERRO 221 North LaSalle Street, Suite 2050 Chicago, IL 60601
For the Defendant City of Chicago:	DYKEMA GOSSETT PLLC by MR. HARRY N. ARGER 10 South Wacker Drive, Suite 2300 Chicago, IL 60606

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(Proceedings heard in open court:)

THE CLERK: Case number 13 C 5626, Manzera, et al. versus Frugoli, et al.

MR. NEWMAN: Good morning, your Honor.

THE COURT: Good morning.

MR. NEWMAN: Jim Newman for the plaintiff Manzera.

THE COURT: Good morning.

MR. McHALE: Good morning, your Honor. Patrick McHale on behalf of the plaintiff --

THE COURT: I didn't hear your name.

MR. McHALE: Patrick McHale on behalf of the plaintiff --

THE COURT: Good morning.

MS. PIERRO: Good morning, Judge. Pamela Pierro on behalf of defendant Frugoli.

MR. ARGER: Good morning, your Honor. Harry Arger for the city.

THE COURT: Okay. How are you all doing? Did you finish your one deposition that we needed to get done?

MR. NEWMAN: Yes, that's finished.

THE COURT: Okay. So are we done with our fact discovery?

MR. ARGER: Well, I think, as we put in our opposition to allow that deposition to proceed, Mr. Forgue, the deponent --

THE COURT: Yes.

MR. ARGER: -- did not testify.

They indicated that Mr. Forgue was going to testify that he reported officers routinely become intoxicated in violation of police policy and that that was the incident which gave rise to his retaliation.

THE COURT: Right.

MR. ARGER: He never testified to anything like that.

THE COURT: Okay.

MR. ARGER: The whole intoxication wasn't anything like it. We don't think he's relevant at all to this case.

THE COURT: Got it. Okay.

So you didn't give me a deposition transcript yet, did you, folks?

MR. ARGER: I don't think we've got one yet, actually.

THE COURT: Or do you have one? You probably don't have one yet, right?

MS. PIERRO: Not yet, Judge.

MR. ARGER: But here's where we are.

THE COURT: Tell me.

MR. ARGER: You know, we don't think he's a relevant witness.

THE COURT: Right.

MR. ARGER: We can file something once we get the transcript and put that issue in the forefront or we can -- I mean, literally we would be doing discovery on his case to show that his retaliation does relate to that, and we would have to do literally a case within a case, which is why we thought -- didn't think he was relevant in the first place, but it may be simpler to actually -- for us to file a motion to bar him based on lack of relevance to our case.

THE COURT: Right. Well, you'll recall when you were here last and I gave permission for him to be deposed, you had a good faith basis to believe that he would say certain things, and then I said I would review what he said to see whether or not he would be relevant to the facts before me and to the *Monell* claim here, so I think that you should queue it up in that way for me -- excuse me, that's not right, tee it up in the queue -- how is that -- tee it up for me that way. So file it as a motion to bar, if that's what you believe, and your reasons for saying that he's not relevant, and then I'll give you an opportunity to respond.

Do you think he is relevant, before we even go there?

MR. NEWMAN: Yes, we think he is.

THE COURT: Oh, you still do.

And you think it goes to the *Monell* claim?

MR. NEWMAN: Yes.

THE COURT: And what is your reasoning behind it?

MR. NEWMAN: He did testify to police having a code of silence and to not -- to retaliating against him for his actions against them in complaining against the police.

THE COURT: Okay. And if I recall from the last time you were all here, we had a number of concerns about his statement in that his issue or his retaliation occurred subsequent to the facts of this case. Isn't that correct?

MR. NEWMAN: Well, he filed his complaint -- oh, yes.

THE COURT: Right.

MR. NEWMAN: That happened subsequent, yes.

THE COURT: So part of your motion to bar is relevance regarding that, and also part of your motion to bar I think was that they're not the same officers, correct?

MR. ARGER: Correct.

THE COURT: So then what you're saying is that anybody could say whatever regarding this code of silence and retaliation and this one is too far afield. And if I do let him in, you want to do more discovery to go into what he has said and dig a little deeper, correct?

MR. ARGER: Exactly.

THE COURT: Okay. I think I've got it framed fine.

When do you want to give me that motion?

MR. ARGER: Well, December, I mean -- can I have --

THE COURT: Don't worry. I don't make lawyers stay up on Christmas Eve.

MR. ARGER: Could I have where we file it the first week of January?

THE COURT: I don't mind that. That's fine.

MR. ARGER: Okay. I don't know how many days that is.

THE COURT: Well, I'll give you until January 6th, which is a Wednesday, I believe.

Correct, Tresa?

THE CLERK: Yes.

THE COURT: Yeah.

MR. ARGER: That's fine.

THE COURT: And then do you want one or two weeks to respond?

MR. NEWMAN: Two weeks, please.

THE COURT: All right. Two weeks after that for a response.

I'll give you a week to reply after that.

THE CLERK: 27th.

THE COURT: All right. And then what I'm going to do is not -- I'm not going to give this a written order. I want to see you again after I've read your cases and have read everything, so hang on just a second and let me see what my schedule looks like.

It becomes fully briefed, Tresa, the 27th?

THE CLERK: Yes.

THE COURT: All right. Let me see you a week later on February 3rd, and I'll give an oral ruling rather than a written one so we can move you along, okay?

Now, tell me as far as the expert testimony where you stand. Have you exchanged anything yet?

MR. ARGER: The parties identified names of witnesses, but no reports were produced.

THE COURT: Okay.

MR. ARGER: So just reading some of the people that the plaintiffs have identified, we were probably going to have rebuttal experts to those, even though I haven't seen the reports yet --

THE COURT: Yes.

MR. ARGER: -- so I need to -- I'll condition it on that, but -- so that's where we are.

I don't know if it makes sense to produce the reports sometime in the near future, then maybe we come back on the -- on February 3rd, we can tell you, you know, what kind of rebuttals and how long we might need for that.

THE COURT: Yes. Tell me who you intend -- who you're exploring as your expert witnesses and what is the basis for their testimony.

MR. NEWMAN: Statisticians to testify that the -- based on the type of CR reports and the findings in the CR reports, that there was a pattern of failure of the police to report on themselves and failure to find -- to order discipline of officers for the complaints that were filed against them.

THE COURT: Okay. So a statistician who has reviewed the CRs that you have gathered in your discovery.

MR. NEWMAN: Yes. And also there's a police expert who will testify that the -- he has testified in a number of federal cases, including *Obrycka*, and that he finds that there is a code of silence amongst the Chicago Police.

THE COURT: And his name?

MR. NEWMAN: I don't off --

THE COURT: You can't recall --

MR. ARGER: Lou Reiter. R-E-I-T-E-R.

THE COURT: Lou Reiter. Okay.

So as far as you're concerned, in your case you aren't going to assert an affirmative -- or a defensive expert? You're going to wait just to respond to his experts?

MR. ARGER: Yes. I mean, with respect to Mr. Reiter, who we're aware of, I haven't seen his report, but I can guess what it's going to say.

THE COURT: Right. And you have the testimony, I'm sure, from the *Obrycka* trial.

MR. ARGER: We have -- we have identified -- we identified a couple of Chicago Police, Chief Rivera and Captain Pigott, who already testified on that subject, so we need to read Mr. Reiter's report to see do we need somebody additionally to rebut Mr. Reiter and --

THE COURT: Okay.

MR. ARGER: -- a statistician, depending on what they say --

THE COURT: Right.

MR. ARGER: -- we may need somebody to rebut that.

THE COURT: Very good.

So how far along are you with those two experts? Are their reports completed?

MR. NEWMAN: I need another two weeks, at least, for one of the experts' reports.

THE COURT: For Mr. Reiter or for the other statistician?

MR. NEWMAN: For the statistician.

THE COURT: Okay. Why don't I do this: I'll give you into the new year to turn over the reports to the defense.

So let's have it due the week after -- oh, that would go into your response.

Let me have you turn over to him the reports when he's making his motion to bar your witness.

So the 6th of January, turn over the -- can you get both of them, Reiter and the statistician?

MR. NEWMAN: Yes.

THE COURT: Okay. Both expert reports to you.

Then when I see all of you again that first week of February, I'll talk with you about what you intend to do for responses. Okay?

MR. ARGER: That's fair.

THE COURT: And talk with each other, too, in the meantime. You don't have to wait for me.

MR. NEWMAN: I don't mean to misrepresent. We do have several other experts.

THE COURT: Oh, well, please, tell me. That's what I'm here for. I want to hear it.

MR. NEWMAN: Yes. One is to identify the blood alcohol content of Mr. Frugoli.

THE COURT: Okay.

MR. NEWMAN: One is to identify the reason why the plaintiff decedent's car was stalled on the Dan Ryan.

And there's one other peripheral -- oh, the State of Illinois Police reconstruction expert.

THE COURT: Okay. Let's go back then to my thoughts on this.

Your blood alcohol expert I assume is -- what is it, a doctor who has tested it or --

MR. NEWMAN: It's a forensic scientist from the State of Illinois.

THE COURT: Okay. So it's a State of Illinois.

Is his report or her report completed?

MR. NEWMAN: Yes. It was completed several years ago and produced in the State of Illinois records.

THE COURT: Okay. So then turn that one over, too, just in case they don't have it. You probably have already.

MR. NEWMAN: Yes.

THE COURT: Okay. And then -- and you intend to call that person?

MR. NEWMAN: Yes.

THE COURT: You don't know that person's name?

MR. NEWMAN: I don't, off the top of my head.

THE COURT: Okay. Fair enough.

And then -- is it a mechanic or someone who is going to talk about the stalling of the car?

MR. NEWMAN: Yes. Somebody from Jerry's Automotive that inspected the car and gave a written opinion to the State -- State Police as to why the car was dead.

THE COURT: Okay. So we already have the reason turned over, but not the expert report turned over.

MR. NEWMAN: The expert report was contained in the records of the State of Illinois.

THE COURT: It was. Okay.

MR. NEWMAN: Everybody got a copy of those.

THE COURT: Very well. So you have that, so that you know that he's going to intend to call that as -- that person as a 702.

MS. PIERRO: Yes, Judge.

THE COURT: And then now let me tell -- tell me about the reconstruction expert.

MR. NEWMAN: He determined the speed of the vehicles when they collided. And that's an important part in the liability case against Frugoli.

And -- oh, there's one other expert.

THE COURT: First, why is the speed an important part? Just so I --

MR. NEWMAN: Well, Frugoli was intoxicated and didn't appear to observe the stalled car even though there was lights --

THE COURT: Okay.

MR. NEWMAN: -- in the area.

THE COURT: Got it. Okay.

Who is your last one?

MR. NEWMAN: That's on the number of people who came down that ramp after the car stalled and didn't collide with it. There's an expert from the State of Illinois that will testify to that.

THE COURT: Okay. So the State of Illinois -- by viewing the camera on the ramp or something like that?

MR. NEWMAN: Yes. Right.

THE COURT: And what is that person an expert in?

MR. NEWMAN: Illinois Department of Transportation guy. Yes.

MR. ARGER: That person was already --

THE COURT: I'm not sure that's 702. Is that 702 or is he just foundation for the evidence?

MR. NEWMAN: Just as an --

THE COURT: Precaution.

MR. NEWMAN: -- abundance of caution, yes --

THE COURT: In case he's going to give an opinion.

MR. NEWMAN: -- we identified him as an expert witness.

THE COURT: Does he have an opinion? Does he have a professional opinion? Or is he just telling you the number of cars?

MR. NEWMAN: He's just telling us the number of cars, I believe.

MR. ARGER: He's already been deposed.

THE COURT: Okay. Is he an expert, in your opinion?

MR. ARGER: I don't think he is.

MS. PIERRO: I don't think --

THE COURT: Okay.

MS. PIERRO: I don't think he -- he didn't appear to offer any sort of opinions other than to simply give us here are the numbers, here is what the data does, but he doesn't do any sort of interpretation of the data.

THE COURT: Fair enough.

So if you intend to have him do something more than simply state what he has to lay the foundation to already be deposed regarding, then you'll need to turn over whatever his professional opinion is, and you'll need to do that by the 6th as well --

MR. ARGER: Thank you.

THE COURT: -- if he has something beyond just the number.

The reason I'm asking all of these is because we're going to set *Daubert* hearings in case the city or the defense believes that these experts have gone too far or there's some gatekeeping function that I should engage in.

Do you have any thoughts on that off the top of your heads today?

MS. PIERRO: Just I guess before we get into that, Judge, I should say that on behalf of defendant Frugoli, I have two experts as well who I have disclosed the names of. And there is also a dramshop defendant who has additionally disclosed the name of an expert on their behalf. None of those reports have yet been tendered. I don't know that anyone is going to have any necessarily rebuttal witnesses for those, but if we could have until sometime in January to disclose our reports as well.

THE COURT: Okay. Tell me who you have.

MS. PIERRO: So I have a physical engineer who is a reconstructionist who will talk about conspicuity, human factors, perception reaction timing --

COURT REPORTER: I'm sorry. Repeat that.

THE COURT: You're speed-talking. And, you know, she's really good, so you must be really fast.

MS. PIERRO: Conspicuity and perception reaction time.

THE COURT: Okay.

MS. PIERRO: Human factors issues.

THE COURT: Okay. Will that expert be commenting on the reconstruction expert that plaintiff has, do you think?

MS. PIERRO: Possibly, yes --

THE COURT: Okay.

MS. PIERRO: -- he does have that information.

THE COURT: So maybe both affirmative as well as rebuttal?

Okay. All right.

MS. PIERRO: And then we have a toxicologist as well.

THE COURT: Okay. Is it to show a different level of alcohol, blood alcohol?

MS. PIERRO: He will most likely comment upon my client's blood alcohol content, but also the plaintiff's blood alcohol content and how that will have affected their decisions to stay on the roadway.

THE COURT: Got it. Okay.

And who else?

MS. PIERRO: Then -- those are my two. Then I know that the other defendant, the dramshop defendant, does have a toxicologist. I'm not sure what his intended opinion is.

THE COURT: And where is the dramshop defendant today?

MR. ARGER: They're usually here. I don't know why they're not.

THE COURT: Okay. So who is that?

MS. PIERRO: Phil Buntin from Morse Bolduc.

THE COURT: Okay. So let's make sure, Tresa, in the minute order today that you make a note that counsel for Mr. Moran and Primero, Inc., for defendants Moran and Primero, Inc. -- oh, and Metropolitan Bank Land Trust was not here for the status.

THE CLERK: Okay.

THE COURT: Okay. So can you give to the plaintiff those reports, please, by January 19th, and then we can have a nice discussion about what everybody wants to do in February, as well as me giving you some guidance on this last deponent.

MR. McHALE: Your Honor, I represent the other plaintiff, and I believe all of our experts who we've also identified are shared.

In the event that we have an additional one, I'll make sure they're disclosed at the same time.

THE COURT: Okay. So the 6th, you've got it ready?

MR. McHALE: Yeah. My --

MR. NEWMAN: The names have all been disclosed.

MR. ARGER: We have all the names. I just would ask, and I think they're going to do this, whatever additional reports, like the IDOT guy --

THE COURT: Yes.

MR. ARGER: They've actually identified Mr. Forgue, so some of these people, the deponent we just talked about, they've identified them as 26(a)(2) witnesses, so I just want to make sure if there's any more reports out there that we have the reports. I mean, if they've already been deposed or something, then we know what they're going to say. But if there's no new reports, if we could have those by the 6th or whenever, that would be fine.

THE COURT: Well, that's what the order will read, so -- and your obligations will be for the 19th. Isn't that what I just -- yes, the 19th.

All right. Now, we don't have you on a trial calendar yet; is that correct?

MS. PIERRO: That's correct.

THE COURT: So you need to get your trial date because we are wrapping up, and you're going to go into this discovery.

So is it going to be an approximate two-week trial?

MR. ARGER: We would anticipate filing a dispositive motion when we get done with all this.

THE COURT: I assumed so.

MR. ARGER: But in terms of trial, that's probably a fair estimate. Two weeks? If we go to trial?

MR. NEWMAN: Yes, I would say so. Two weeks is probably about right.

THE COURT: Shorter? Or longer?

MR. NEWMAN: No, I don't think so.

MS. PIERRO: Possibly longer, Judge. There are --

THE COURT: I mean, we have --

MS. PIERRO: -- 30 fact witnesses, plus right now I believe we have probably 10 experts named amongst the different parties.

THE COURT: We have -- yeah, 10 so far, and maybe more. And 30 fact witnesses?

MR. McHALE: Right.

THE COURT: Two plaintiffs. And we haven't even heard from our dramshop defendant, so we don't know what his -- so he needs to be here.

I'll give you my sense of when the trial date would be so that you come prepared with your trial calendars on the 3rd when I see you in February.

My thoughts are that you would go either July 11th or August 22nd, and I can give you two weeks at both of those two times. So please look into your calendars. Be ready to tell me what your conflicts are. And they better be significant. Okay?

MR. NEWMAN: Thank you.

THE COURT: All right. Anything else for today, folks?

(No response.)

THE COURT: All right.

MR. ARGER: Thank you.

THE COURT: Nice to see you. Good luck.

MS. PIERRO: Thank you.

MR. NEWMAN: Thank you, your Honor.

(Proceedings concluded.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ GAYLE A. McGUIGAN — *January 26, 2016*
Gayle A. McGuigan, CSR, RMR, CRR — Date
Official Court Reporter

_____________________ — *January 26, 2016*
Gayle A. McGuigan, CSR, RMR, CRR — Date
Official Court Reporter